



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 15, 1996

Mr. Gary W. Smith
City Attorney
City of Greenville
P. O. Box 1049
Greenville, Texas 75403-1049

OR96-1881

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101258.

The City of Greenville Police Department (the "department") received a request for information related to offense report number 96-47380, concerning an unattended death. You have identified an offense report and related documents that are responsive to the request. You intend to release an edited copy of the report to the requestor, because you assert that the information you have redacted from these reports is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. You have submitted unedited copies of the reports to this office for review. We have considered the exceptions you claim and have reviewed the documents at issue.

We first address your assertion that section 552.108 of the Government Code excepts *some* of the submitted information from required public disclosure. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Since the records at issue come within the purview of section 552.108, we conclude that the information at issue may be withheld under this section.

We note, however, that information normally found on the front page of an offense report is generally considered public.¹ *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We have enclosed a summary of the type of information that is public. We conclude that section 552.108 of the Government Code excepts the fingerprint information from required public disclosure.² Although section 552.108 authorizes you to withhold this information, we note that you may choose to release all or part of the other information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

We next address your assertion that section 552.101 of the Government Code excepts some of the submitted information, which you have marked, from required public disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to non-criminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084. If the submitted report at issue contains any CHRI regarding any person, this information is confidential by law. Therefore, the department must withhold any CHRI from the requestor pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.

¹The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

²In your original letter concerning this matter, you raised section 552.108 of the Government Code as the basis to withhold *only* the fingerprint information. Therefore, in this ruling our office is only considering the application of section 552.108 to this limited set of information. See Gov't Code § 552.301(b)(1); Open Records Decision Nos. 363 (1983), 216 (1978) (section 552.108 is discretionary exception).

1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

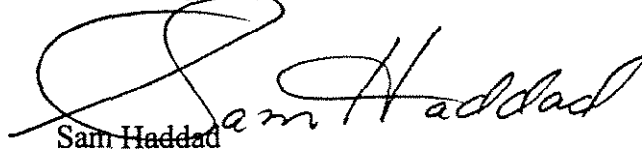
Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

This office has previously ruled that, generally, the details of an attempted suicide are protected by common-law privacy. *See* Open Records Decision No. 422 (1984) (presumption that details of self-inflicted wound, beyond mere fact that it was self-inflicted, are excepted by common-law privacy may be overcome by demonstration that public has substantial interest in particular incident). However, the *right of privacy* is personal to an individual and *lapses upon his death*. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981). Therefore, the city may not protect from public disclosure the list of prescription drugs which were found to belong to the suicide victim. However, the city must withhold from public disclosure information that if released would implicate another individual's privacy interests pursuant to section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Sam Haddad". The signature is written in dark ink and is positioned above the printed name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 101258

Enclosures: Submitted documents
Summary of Open Records Decision No. 127 (1976)

cc: Mr. Robert Biederman
500 N. Akard St., No. 2000
Dallas, Texas 75201
(w/ Summary of Open Records Decision No. 127 (1976))